

**INTERGOVERNMENTAL AGREEMENT**

BETWEEN  
THE STATE OF ARIZONA  
AND  
TOWN OF MARANA

**THIS AGREEMENT** is entered into this date August 1st, 2007, pursuant to the Arizona Revised Statutes § 11-951 through 11-954, as amended, between the STATE OF ARIZONA, acting by and through its DEPARTMENT OF TRANSPORTATION (the "State") and the TOWN OF MARANA, acting by and through its MAYOR and TOWN COUNCIL (the "Town").

**I. RECITALS**

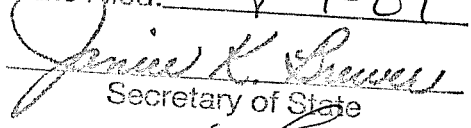

1. The State is empowered by Arizona Revised Statutes § 28-401 to enter into this Agreement and has delegated to the undersigned the authority to execute this Agreement on behalf of the State.

2. The Town is empowered by Arizona Revised Statutes § 9-240 to enter into this Agreement and has by resolution, a copy of which is attached hereto and made a part hereof, resolved to enter into this Agreement and has authorized the undersigned to execute this Agreement on behalf of the Town.

3. The Town and the State agree that the construction of a new traffic interchange on I-10 between Cortaro Road and Avra Valley Road in Pima County, Arizona is essential to the public safety and welfare. The interchange will connect Twin Peaks Road on the west to Linda Vista Boulevard/El Camino de Mañana on the east. The interchange will be grade-separated with I-10 and the Union Pacific Railroad track and will include intersections with the I-10 eastbound and westbound frontage roads. A new business access/circulation roadway will be included. Also included is a new bridge over the Santa Cruz River. The map attached as Exhibit 1 depicts the location and design of the I-10 Traffic Interchange at Twin Peaks hereinafter referred to as the Project.

4. The State has agreed to contribute a maximum of \$14,000,000.00 from programmed funds scheduled in 2007-2011 towards all costs of the Project including construction engineering and administration. The Town will provide design plans and right-of-way plans. The Town will be responsible for acquisition of all right-of-way. The Town will provide and pay for all relocation assistance and benefits as provided below. The Town will pay actual costs to the State in excess of the State's contribution. The State will review and approve the design plans and right of way plans for the Project and will advertise for bid award and administer the construction contract.

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NO. 29097  
Filed with the Secretary of State  
Date Filed: 8-1-07  
  
Secretary of State  
By: 

**THEREFORE**, in consideration of the mutual covenants expressed herein, it is agreed as follows:

## **II. SCOPE OF WORK**

1. Authorize the State to act as its agent for the Project
2. The Town shall:
  - a. Provide design plans prepared to State standards, specifications and other such documents and services required for construction bidding of the Project and incorporate or resolve States review comments.
  - b. Be responsible for payment of any contractor claims for extra compensation due to delays attributable to the Town. The State shall administer the process and the Town will have input in the claims process. All settlements will be jointly approved. The Town will deposit 100% of cost increases due to change orders into the LGIP account.
  - c. Prepare the right-of-way plans and coordinate with ADOT R/W Plans Section regarding the survey data.
  - d. Be responsible for acquisition of all right of way needed for construction, including, without limitation, the acquisition and removal of all outdoor advertising structures within the Project limits. Be responsible for all relocation if any. The Town shall use appraisers and right of way acquisition personnel approved by the State and shall confirm to the Arizona Department of Transportation ("ADOT") Right of Way manual and the Uniform Relocation Assistance and Real Property Acquisition Policies Act.
  - e. Be responsible for obtaining all environmental clearances and complying with all environmental requirements, including all archeological inventory and mitigation.
  - f. Be responsible for demolition of improvements, asbestos removal and removal of hazardous material in the right-of-way acquired using State approved suppliers.
  - g. Be responsible for all Project costs, including construction and administration ("Project Costs") over the State's contribution of \$14,000,000.00 payable from Town and Pima Association of Governments Regional Transportation Authority funds referred to on Exhibit 2.
  - h. Convey, by Arizona transportation Board Resolution all property necessary for the Interchange and frontage roads to the State prior to bid advertisement for the Project. The Town will be responsible for preparing a legal description and exhibits for the Resolution of the property to be conveyed; ADOT will prepare said Resolution and submit to the Board. The Town will be responsible for monumenting the boundaries and reflecting the boundaries on the right-of-way plans.
  - i. Prior to Board establishment, the Town shall provide to the State all original, recorded vesting documents and Title insurance policies. The property to be conveyed shall be free and clear of all liens and encumbrances. The Town will be responsible for obtaining releases on any outstanding liens that have not cleared by the time of Board establishment.
  - j. After construction, be responsible for ownership and maintenance of the portion of the Project outside ADOT's right of way limits as depicted on the map attached as Exhibit 3, and waive the requirements of Arizona Revised Statute 28-7209. *(Area depicted on Exhibit 3 will be abandoned by Arizona Transportation Board Resolution upon completion of the Project.)*

k. Provide an estimated schedule of cash flow requirements and detail of the source of funds, attached as Exhibit 2.

- i. As good faith, deposit \$15,000,000.00 to the State prior to bid award of the construction contract in the LGIP Account with the State Treasurer's office.
- ii. Upon receipt of a monthly invoice from the State, the Town shall pay it's proportionate share of the project construction costs. The Town will continue to pay its proportionate share until the project is completed and final billing. The Town's proportionate share will be calculated based upon the ADOT contribution and the Project cost. The numerator is the Project Cost minus \$14,000,000.00 and the denominator is the Project Cost  $((\text{Project Costs} - \$14\text{M})/\text{Project Cost})$ .
- iii. It is the expectation of the Parties that upon payment of the last invoice and completion of the Project, there will be no money left on deposit. Any funds remaining on account will be paid to the Town. All money on deposit with ADOT shall be deposited in an interest bearing escrow account at the State Treasurer's Office All interest shall be credited to the Town's portion of the Project costs.

3. The State shall:

- a. Review and approve all right of way plans, legal descriptions and other right of way documents prepared by the Town.
- b. Review and approve the design documents required for construction of the Project, and provide comments to the Town as appropriate.
- c. Administer the claims process and be responsible for payment of any contractor claims for extra compensation due to delays attributable to the State. The Town will have input in the claims process and all settlements will be jointly approved.
- d. Advertise for bids and award the construction contract for the Project. Administer contracts for the Project and make all payments to the contractor.
- e. Be responsible for all aspects of construction administration pursuant to the current ADOT Construction Manual.
- f. After construction, be responsible for ownership and maintenance of all right of way conveyed to the State by the Town through Board Resolution for the Interchange and frontage roads as depicted on Exhibit 3.
- g. Pay all Project costs from funds deposited by the Town's (attached as Exhibit 2) and the State's contribution.
  - i. Monthly invoice the Town, for Project construction costs that are to be funded with Town or programmed funds in excess of the State's contribution.
  - ii. Credit interest earnings on monthly cash balances into the Town's deposit account.

- iii. Once all project costs from State and Federal sources have been paid, use its best efforts to "draw down" the balance of the deposit account in such a manner so as to retain a sufficient balance to fund future estimated monthly project costs.
- iv. Assist the Town with establishing a Town Local Governmental Investment Pool (LGIP) Account with the State Treasurer's Office. The Town is required to deposit \$15,000,000.00 prior to bid award. Interest on Town's LGIP Account shall be for the benefit of the Town, available to pay for monthly actual Project costs.

h. Upon completion of the Project, by State Transportation Board Resolution, the State shall transfer and turnback ownership to the Town of all right-of-way, depicted on Exhibit 3 as "Marana Maintenance Area".

4. Both Parties Agree:

- a. To grant the other, their agents, contractors, consultants and employees the right to enter any property acquired for the Project for purposes of the Project.
- b. To waive all permits and permit fees associated with the Project that would otherwise be required.
- c. For the purposes of this Agreement, Right-of-Way is defined as being either a fee or easement interest.

**III. MISCELLANEOUS PROVISIONS**

1. The Recitals to this Agreement are incorporated herein. The terms, conditions and provisions of this Agreement shall remain in full force and effect until completion of construction of the Project and related deposits. The Town assumes full responsibility for the design, plans, specification, reports, and the engineering in connection therewith of any design contractor cost over-runs and design claims.

2. Each party (as "Indemnitor") agrees to indemnify, defend, save and hold harmless the other party (as "Indemnitee") from and against any and all claims, losses, liability, costs, or expenses including reasonable attorneys' fees, hereinafter collectively referred to as ("claims"), arising out of bodily injury of any person, including death or property damage, but only to the extent that such claims which result in vicarious/derivative liability to the Indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the Indemnitor, its officers, officials, agents, employees or volunteers.

3. This Agreement shall become effective upon filing with the Secretary of State.

4. This Agreement may be cancelled in certain instances in accordance with Arizona Revised Statutes § 38-511.

5. The provisions of Arizona Revised Statutes § 35-214 pertaining to State audit are applicable to this Agreement.

6. In the event of any controversy, which may arise out of this Agreement, the Town and the State agree to abide by required arbitration as is set forth for public works contracts in Arizona Revised Statutes § 12-1518.

7. All notices or demands upon any party to this Agreement shall be in writing and shall be delivered in person or sent by mail, addressed as follows:

Arizona Department of Transportation  
Joint Project Administration  
205 S. 17<sup>th</sup> Avenue, Mail Drop 616E  
Phoenix, Arizona 85007  
(602) 712-7525  
(602) 712-7424 Fax

Town of Marana  
Michael A. Reuwsaat,  
Town Manager  
11555 W. Civic Center Dr.  
Marana, Arizona 85653  
Phone # 520-682-3401  
Fax # 520-682-2654

8. This Agreement is subject to all applicable provisions of the Americans with Disability Act (Public Law 101-336, 42 U.S.C. 12101-12213) and all applicable Federal regulations under the Act, including 28 CFR Parts 35 and 36. The parties to this Agreement shall comply with Executive Order Number 99-4 issued by the Governor of the State of Arizona and incorporated herein by reference regarding "Non-Discrimination".

9. Non-Availability of Funds: Every payment obligation of the State under this Agreement is conditioned upon the availability of funds appropriated or allocated for the payment of such obligations. If funds are not allocated and available for the continuance of this Agreement, this Agreement may be terminated by the State at the end of the period for which the funds are available. No liability shall accrue to the State in the event this provision is exercised as a result of termination under this paragraph.

10. In accordance with Arizona Revised Statutes § 11-952 (D,) attached is the written determination of each party's legal counsel and that the parties are authorized under the laws of this State to enter into this Agreement and that this Agreement is in proper form.

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**IN WITNESS WHEREOF**, the parties have executed this Agreement the day and year first above written.

TOWN OF MARANA

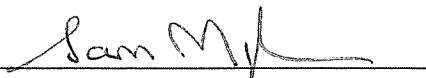
**STATE OF ARIZONA**

Department of Transportation

By

  
ED HONEA  
Mayor

By

  
SAM MAROUFKHANI, P.E.  
Deputy State Engineer, Development

ATTEST:

JPA –

Town of Marana –Traffic Interchange on  
I-10 between Cortero Road and Avra Valley Road  
Approved by AG's office May 22, 2007-ly

By

  
JOCELYN C. BRONSON  
Town Clerk

## MARANA RESOLUTION NO. 2007-109

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RELATING TO PUBLIC WORKS; APPROVING AND AUTHORIZING THE EXECUTION OF AN INTERGOVERNMENTAL AGREEMENT BETWEEN THE ARIZONA DEPARTMENT OF TRANSPORTATION AND THE TOWN OF MARANA RELATING TO THE I-10 / TWIN PEAKS TRAFFIC INTERCHANGE.

WHEREAS the construction of the new I-10 Twin Peaks Traffic Interchange is essential to the public safety and general welfare of local residents as well as those traveling through Arizona on Interstate-10; and

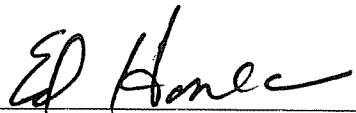
WHEREAS the State of Arizona, by and through its Department of Transportation, desires to assist the Town of Marana in its design, planning and funding for the project; and

WHEREAS the Mayor and Council of the Town of Marana feel it is in the best interests of the citizens of both the State and the Town of Marana to enter into this intergovernmental agreement.


NOW, THEREFORE, BE IT RESOLVED BY THE MAYOR AND COUNCIL OF THE TOWN OF MARANA, that the intergovernmental agreement between the Town of Marana and the State of Arizona attached to and incorporated by this reference in this resolution as Exhibit A is hereby approved, and the Mayor is hereby authorized to execute it for and on behalf of the Town of Marana.

IT IS FURTHER RESOLVED that the Town's Manager and staff are hereby directed and authorized to undertake all other and further tasks required or beneficial to carry out the terms, obligations, and objectives of the intergovernmental agreement.

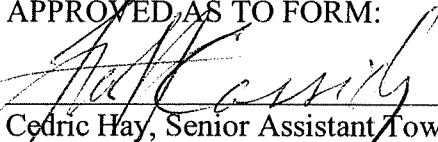
PASSED and ADOPTED by the Mayor and Council of the Town of Marana, Arizona, this 19th day of June, 2007.

  
\_\_\_\_\_  
Mayor Ed Honea

ATTEST:

  
\_\_\_\_\_  
Jocelyn C. Bronson, Town Clerk

APPROVED AS TO FORM:

  
\_\_\_\_\_  
Cedric Hay, Senior Assistant Town Attorney

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CIH 6/14/07

ATTORNEY APPROVAL FORM

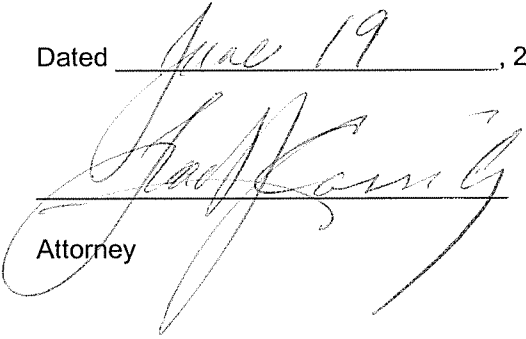
FOR THE TOWN OF MARANA


INTERGOVERNMENTAL AGREEMENT DETERMINATION

I have reviewed the above referenced Intergovernmental Agreement between the State of Arizona, acting by and through its DEPARTMENT OF TRANSPORTATION, and THE TOWN OF MARANA, an Agreement among public agencies which, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned TOWN'S Attorney who has determined that it is in proper form and within the powers and authority granted to the TOWN under the laws of the State of Arizona.

No opinion is expressed as to the authority of the remaining parties to enter into said Agreement.

Dated June 19, 2007

  
\_\_\_\_\_  
Attorney

<b>TERRY GODDARD</b> Attorney General	 <b>OFFICE OF THE ATTORNEY GENERAL</b> STATE OF ARIZONA	CIVIL DIVISION TRANSPORTATION SECTION Direct Line: 602.542.8837
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**INTERGOVERNMENTAL AGREEMENT**  
**DETERMINATION**

A.G. Contract No. KR07-0594-TRN, an agreement between public agencies, has been reviewed pursuant to A.R.S. § 11-952, as amended, by the undersigned Assistant Attorney General who has determined that it is in the proper form and is within the powers and authority granted to the State of Arizona.

No opinion is expressed as to the authority of the remaining parties, other than the State or its agencies, to enter into said agreement.

Date: 24 July 2007

Terry Goddard  
ATTORNEY GENERAL



James R. Redpath  
Assistant Attorney General  
Transportation Section

JRR:djd:8343